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Transfer of Executive Power

by

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TRANSFER OF EXECUTIVE POWER

NEVER BEFORE in an election-to-inauguration period have the outgoing and incoming administrations made so wholehearted an effort to work together for an orderly transfer of the federal executive power. Innovations introduced eight years ago when President-elect Eisenhower made ready to take over the duties of President Truman, appear to be evolving into a tradition of mutual effort above the level of partisan politics, to assure effective continuity of government.

The United States position of leadership in the world has made the two-and-a-half month "interregnum"¹ between election and inauguration of a new Chief Executive a period of some anxiety. Attention at home and abroad inevitably turns toward the new source of American power in the figure of a President-elect who has not yet received the seals of office. The greatest hazard to the nation in this situation is eruption of a crisis somewhere on the globe that may require prompt executive action at a time when the incumbent President's power to take a bold course is diminished by his imminent departure from office. In the present case, however, there is considerably less dilution of the "lame-duck" President's authority than is usual, due to Eisenhower's continuing personal popularity and the almost even division of the popular vote in the Nov. 8 election.

EISENHOWER-NIXON-KENNEDY COOPERATION

President Eisenhower on the day after the 1960 election promised the full cooperation of himself and his official family to his elected successor in order to facilitate the transfer of authority. In a telegram to President-elect John F. Kennedy, he said: "I stand ready to meet with you at any mutually convenient time to consider problems of continuity of government and orderly transfer of executive responsibility on Jan. 20."

¹ In a true interregnum the country would be without a head of state during the period of transition.

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The President suggested that Kennedy send one of his assistants to meet with "my principal staff assistant, Wilton B. Persons, to whom I am assigning coordinating responsibility." Persons would be prepared to arrange for representatives of the President-elect to consult with the present heads of executive departments.² Eisenhower added: "Meetings of this kind over the coming weeks with the Director of the Bureau of the Budget might, for example, be important in providing information to you concerning the budget now in preparation. In addition, the Secretary of State will be prepared for meetings to provide information on foreign policy activities on which there will be special need for continuity until you have had opportunity, after inauguration, to arrange these matters to your satisfaction."

Replying by wire, Kennedy thanked the President for his "willingness to meet and work with me in order to effect an orderly transfer of executive responsibility." He appointed Clark M. Clifford as his chief liaison representative with the outgoing administration. Clifford was White House special counsel to President Truman and served during the 1960 presidential campaign as Kennedy's chief agent for study of transfer-of-authority problems. Persons and Clifford met for two and a half hours at the White House, Nov. 14, in what they described as a "most satisfactory" conference.

Kennedy is expected to confer with the President when he returns to Washington after his Palm Beach vacation. He held a conference in Florida Nov. 14 with his defeated rival for the Presidency, Vice President Richard M. Nixon, now titular head of the Republican party. Press reports said the two had discussed possible participation of Republicans in the Cabinet as a means of promoting national unity. Kennedy told reporters at a news conference the day after his election that his choices for Cabinet posts in the new administration would be withheld until late November. The only announcements on top personnel to date have been that J. Edgar Hoover, director of the Federal Bureau of Investigation, who has served under three Republican and two Democratic Presidents, and Allen W.

² It was disclosed Nov. 18 that Paul-Henri Spaak, Secretary General of NATO, had asked Kennedy to designate a member of his staff to confer with him on the future of the Atlantic alliance. Paul H. Nitze, a top American diplomat in the Truman administration, was given that assignment.

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Dulles, director of the Central Intelligence Agency, have agreed to keep their posts.

Questioned by reporters at Palm Beach, Nov. 18, after Kennedy had received a briefing from Dulles on the President's reasons for having ordered the Navy to protect Guatemala and Nicaragua against invasion, the President-elect's acting press secretary said there would be no comment by Kennedy of any action taken by the Eisenhower administration during the transition period. "Sen. Kennedy feels it is improper to discuss actions or policies of the United States government at this time," he said, "because he has no responsibilities until he assumes office on Inauguration Day."

Major Problems in Transfer of Power

CHANGE OF CHIEF EXECUTIVES under the American system presents two major problems: (1) How to enable the President-elect to prepare himself adequately for taking over the reins of government in the relatively short period of 10½ weeks between election and inauguration on Jan. 20, and (2) How to prevent a temporary weakening of presidential authority during a period when one President is on his way out and the nation's new choice has yet to assume office. These problems take on added difficulty when the election brings not only a new President but also a change of party leadership to the White House.

GUIDELINES FOR THE 1960-61 TRANSITION PERIOD

Countless volumes have been written on the nature of the Presidency and the men who have occupied the White House, but until this year little serious study had been given to the special problems associated with the shift from one administration to another. Last spring the Carnegie Corporation agreed to finance a project of the Brookings Institution for study of the practical difficulties involved.³

The Brookings study is important not only because it explores a new field of public concern, but also because it

³ The study was conducted by two Brookings staff members, Stephen Benedict and Laurin L. Henry. The latter is the author of *Presidential Transitions*, a book reviewing the seven previous presidential changeover periods of the 20th century.

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has engaged the active cooperation of the 1960 candidates for the Presidency. Their representatives—Clark Clifford for Kennedy and Brig. Gen. Robert Cushman, Jr., for Nixon—worked with an advisory committee of 14 men who had held key posts in the F. D. Roosevelt, Truman and Eisenhower administrations and who had intimate acquaintance with the changeover experience of the recent past.

The purpose of the study was to lay out for the new President-elect the organizational and policy problems he would face during the transition and during his first weeks in office. The group prepared a series of papers which were made available to both candidates shortly before election day. The papers included a list of priorities for actions to be taken by the victorious candidate and made recommendations pertaining to the wide range of problems he would face—from organizing or reorganizing the White House staff to measures to implement foreign policy.

Back of the need for guidelines of this kind is the tremendous growth and complexity of government operations, the greatly enlarged scope of responsibility held by modern Presidents, and the ever-present possibility of a new crisis in the cold war. In earlier periods, when national problems were largely internal and the federal establishment was small, a hiatus in effective use of the presidential powers seldom presented major hazards.

Under present conditions, the general welfare clearly requires that the transfer of government control after the election be handled in a way that maintains the government's capacity for instantaneous, responsible decisions on emergencies of international relations and national security. It must be done in a way that minimizes delays in decision making . . . that enables the new administration to determine its policy directions with the least possible delay . . . [and] avoids unnecessary disruption of the continuing machinery and personnel of the government.⁴

Few previous administrations have bridged the gap with full success. Although useful innovations were introduced in 1952-53, the incoming and outgoing administrations of 1960-61 still have few reliable precedents to guide them.

DANGERS IN FIELD OF INTERNATIONAL RELATIONS

The gravest aspects of the transfer of executive power lie in the areas of national security and foreign affairs. Both friendly and hostile powers are preparing to bring

⁴ "Transferring the Presidency," *Carnegie Corporation of New York Quarterly*, October 1960, pp. 1-2.

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pressures on the new administration, even before it takes office, for statements or actions favorable to their purposes.

A few hours after his victory was assured, Kennedy received a congratulatory message from Soviet Premier Nikita S. Khrushchev expressing hope that the change of administration would restore the good feeling between Russia and the United States that existed under Franklin D. Roosevelt.⁵ This was taken to be Khrushchev's opening gambit in a drive for an early summit meeting. Other indications of what Kennedy can expect in the way of pressures from various quarters abroad were the announcement by Chancellor Konrad Adenauer of West Germany that he planned to visit Kennedy in mid-February; Prime Minister Harold Macmillan's statement in the British House of Commons that he looked forward to meeting Kennedy "on the earliest appropriate occasion"; statements by Algerian nationalist leaders that they expect Kennedy to support their six-year-old war for independence; warnings from Arab officials that they will resist any attempt by the new administration to break the Arab economic boycott of Israel.

Khrushchev had said on May 20, after the breakup of the summit conference in Paris, that he would take no action on the Berlin situation until a new summit meeting could be arranged, an eventuality he did not expect for "six or eight months." On July 3, the Soviet leader said he looked for no negotiations on disarmament until after the United States had elected a new President.⁶ Despite these seeming assurances of temporary inaction on cold war issues, Khrushchev's record of lightning shifts of tactics, and the explosive situations in many parts of the world, give ground for some concern over the situation in which the United States would find itself should a new crisis of major proportions develop during the transition period.

MECHANICS OF GOVERNMENT; LEGISLATIVE PROGRAM

The President-elect must ready himself for the difficult task of steering the nation safely through the shoals of the cold war at the same time that he tackles the manifold

⁵ Kennedy replied that he was "most appreciative of your courtesy in sending me a message of congratulations" and said "the achievement of a just and lasting peace will remain a fundamental goal of this nation and a major task of its President."

⁶ Soviet Deputy Foreign Minister Valerian A. Zorin said in United Nations debate, Nov. 15, that Russia was ready to negotiate "constructively on general disarmament with the Kennedy administration."

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preparations for taking command of the vast, sprawling functions of the Executive Branch. At his inauguration on Jan. 20, the new President becomes boss of a governmental complex employing 2.4 million persons, of whom 1,200 hold posts subject to presidential appointment. The Executive Office of the President includes such major agencies as the Bureau of the Budget, the Council of Economic Advisers, the National Security Council, the Office of Civil and Defense Mobilization and the Central Intelligence Agency. In addition to the 10 regular departments, there are 42 independent agencies directly subject to presidential control.

The President-elect has to move promptly to line up his major appointments, so that the men and women he designates for key posts will have time to prepare for their future duties. Clifford is reported to have advised Kennedy that he should choose at least 150 to 200 key appointees by Dec. 1 and another 350 to 400 by Jan. 1 to be sure that his administration will be ready to discharge its responsibilities when the time comes.

During the period before inauguration the President-elect must decide which of the many programs and policies he espoused during the campaign shall have priority. He must plan with his advisers and his party's leaders in Congress the strategies to be used in pushing through the legislative program for the "first 100 days." In the present instance, Kennedy may feel the need to decide whether to bring pressure for rule changes in Congress that would prevent obstruction of his program by committee chairmen of his own party, some of whom failed to support him in the campaign.

BUDGET PROBLEMS FACING KENNEDY ADMINISTRATION

Perhaps the most difficult task of the "shadow government," from the technical standpoint, is to review the present administration's budget, which under law must be presented to Congress within 15 days of its convening on Jan. 3, or not later than two days before the new President takes office. The budget is the most concrete expression of administration policy on the vast number of federal programs; it is hardly conceivable that a new President, particularly one of a different party, would not want to make important changes, if not to offer an entirely new budget.

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The difficulties of this aspect of the transfer problem were vividly illustrated during early months of President Eisenhower's first term.

Drawing up the federal budget is a time-consuming task, requiring months of work by hundreds of high-level officials and countless technical and clerical workers. The business of appropriating must be tackled promptly by Congress if funds are to be made available in time to permit smooth continuation of government activities into the fiscal year beginning next July 1. May 1 is considered the deadline beyond which a President cannot expect Congress to approve significant revisions of the budget.

TRANSFERS IN PERIODS OF DOMESTIC EMERGENCY

One of the most critical periods in American history was the four months between the election and inauguration of Abraham Lincoln. By the time Lincoln took office on March 4, 1861, seven states had seceded from the Union and the newly formed Confederate States of America had seized forts, arsenals and other federal property in the South. Some northerners even questioned the wisdom of Lincoln's taking office, suggesting his replacement by someone more acceptable to the South.

After F. D. Roosevelt's election in November 1932, the country suffered a four-month period of governmental inaction as the economic crisis deepened, followed by swift enactment of sweeping reforms during the first "100 days" of the 73rd Congress. Experience during the "lame-duck" interim led to ratification by all 48 states in 1933 of the 20th Amendment to the Constitution, moving the date for commencement of the presidential term from March 4 to Jan. 20 and setting a new date for the convening of Congress so that a new President could deal immediately with a newly elected rather than a holdover Congress. The full effect of the amendment was delayed almost two decades. As a result of Roosevelt's long tenure and Truman's succession from the Vice Presidency, no newly elected President was forced during that period to bide his time before assuming office.

When Eisenhower was chosen by the voters in 1952, problems associated with the transfer of power had been all but forgotten. Major issues before the country at that time were a truce in Korea and the impending termination

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of wage-price controls. No new executive action was taken on Korea, but a month after election day President Truman did act forcefully on the wage-price issue.⁷

EFFECTS OF 20TH AMENDMENT ON TRANSFER PROBLEMS

While the 20th Amendment cut the President-elect's waiting period nearly in half, it encumbered the process of transferring authority in other ways. Under present procedures, the retiring President submits his State of the Union message and his proposed budget for the ensuing fiscal year only a fortnight or so before his term expires. In the case of a second-term President, there is no problem; if the new President is of the same party as the retiring Chief Executive, the problems are relatively simple. But when the new President is of the other party and has widely differing views on needed legislation and proper apportionment of government expenditures, the difficulties in making an orderly transfer of power can be extreme.

Truman was the first President who had occasion to send a major message to a newly elected Congress on the eve of his departure from office. His State of the Union message of Jan. 7, 1953, was not delivered in person as in previous years, but was read by the clerks of Senate and House. Truman devoted his message largely to a review of the accomplishments of his administration and made no recommendations for new legislation because this duty fell properly "to my successor, not to me, and I would not infringe upon his responsibility to chart the forward course."

Truman sent his budget message to Congress on Jan. 9, 1953, 11 days before stepping down. He noted that "neither my successor . . . nor any of his staff has participated in the decisions" or had any responsibility for the amounts requested. He said revisions could be expected from his successor. Eisenhower did not submit a consolidated budget in his first year in the White House but offered a series of revised estimates which came to be known as the "Eisenhower budget." These revisions were not completed until the new President had been in office for approximately 100 days.

⁷ The Wage Stabilization Board had cut back by 40c a pay raise of \$1.90 that had been negotiated by the United Mine Workers, but Truman on Dec. 3, 1952, overruled the board, restoring the higher figure. Truman explained that he did not want to saddle the incoming administration with a major strike, which he was sure would follow if the cutback should be sustained.

Evolution of New Policies on Transition

NO IDEAL SOLUTION has been offered for the dilemma presented by the need to maintain a strong Presidency while at the same time giving the incoming Chief Executive the time needed to prepare himself for his new responsibilities. Neither shortening nor lengthening the period between election and inauguration would meet both of these objectives. But much can be done and is being done to reduce the difficulties under the timetable set by the 20th Amendment. A prime requisite of an orderly and secure transfer of power is full cooperation between the outgoing and incoming administrations with no consideration of political advantage.

SECRET BRIEFINGS BEFORE AND AFTER ELECTION

Because of the seriousness of conditions affecting national security, recent Presidents have given contenders for their office access during the campaign period to certain secret information bearing on defense and foreign relations. This has been done primarily to prevent uninformed and possibly dangerous statements in campaign speeches, but at the same time has aided the candidates in preparing to meet the problems they would face as President. Roosevelt in 1944 and Truman in 1948 made such information available to Thomas E. Dewey, the Republican presidential candidate in each of those years.

Shortly after the 1952 party conventions, President Truman summoned the Democratic nominee, Adlai E. Stevenson, to a White House meeting on Aug. 12 at which top administration officials briefed him on the international and military situations. Eisenhower criticized Truman's course. He said it "implied a decision to involve responsible non-political officers of our government who bear heavy responsibilities in our national defense organization into a political campaign in which they have no part." He demanded to know "whether the President and his Cabinet can possibly contemplate using the resources of the federal government to influence . . . voters" in the election.

Truman then invited Eisenhower to a similar briefing, but the offer was rejected. In a telegram to the President the Republican candidate stated that the briefings would

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be "unwise and likely to cause confusion in the public mind." Eisenhower said he wanted to "remain free to analyze publicly administration policies." Accordingly, "our communications should be only those which are known to all the American people." However, he would instantly change his position if, in event of emergency, the administration wanted the benefit of his experience as a soldier and former chief of the Allied forces in Europe.⁸ Eisenhower did accept weekly reports from the Central Intelligence Agency with the understanding that this would "in no way limit my freedom to discuss or analyze foreign programs as my judgment dictates." As candidate for reelection in 1956, Eisenhower arranged similar periodic briefings from the C.I.A. for his opponent, Adlai Stevenson.

Eisenhower announced last July 17 that he would offer confidential national security information to both candidates and their running mates during the 1960 campaign, the information to be given to them directly, not to persons on their staffs. Kennedy was reported to have received two briefings on international developments during the campaign from C.I.A. Director Dulles, and he has had several briefings since the election.

The *New York Times* quoted Eisenhower officials, Nov. 17, as having said Kennedy's representative, Clark Clifford, had been notified "a few hours in advance" of the measures to be taken by the President to stem the outflow of gold and to cut the deficit in the international balance of payments, some of which would carry over into the new administration. Kennedy seems to have been given no prior notice of the President's purpose to order the Navy to protect Central American countries against Communist-directed invasion. Two matters certain to be discussed when the President and President-elect confer at the White House are whether atomic weapons shall be given the country's NATO allies and whether nuclear testing shall be resumed before the new administration takes office.

LESSONS FROM PAST SHIFTS OF POWER IN EMERGENCIES

One hundred years ago, in the critical transition period of 1860-61, there was a complete lack of contact between

⁸ Truman told a news conference, Aug. 14, 1952, that Eisenhower had been notified 10 days earlier of the administration's intention to offer him top secret information on the international situation. Later Gen. Omar Bradley, Army Chief of Staff, said his aides had delayed sending the invitation to the Republican candidate, not recognizing the matter as urgent.

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President Buchanan and President-elect Lincoln. But Lincoln did keep in touch with the Army Chief of Staff, Winfield Scott, telling the aged general that he was expected to hold on to retake forts in the South. When considering the possibility of defeat at the polls by Gen. George B. McClellan after his renomination in 1864, Lincoln made a note, Aug. 23, stating that it would be "my duty so to cooperate with the President-elect as to save the Union between the election and the inauguration, as he will have secured his election on such ground that he cannot possibly save it afterward."

Woodrow Wilson in 1912-13 evaded invitations to visit President Taft in the White House, but in 1916, when the country faced involvement in the European war and Wilson feared that he might not be re-elected, he asked Secretary of State Lansing to join Vice President Marshall in resigning should the Republican candidate, Charles Evans Hughes, be chosen at the polls. Wilson planned then to appoint Hughes Secretary of State and resign himself, to allow the victorious candidate to step immediately into the Presidency.⁹ Future use of such a procedure was rendered impossible when Congress in 1947 put the Speaker of the House and the President pro tempore of the Senate, who hold office by reason of election as members of Congress, ahead of the appointive Secretary of State in the line of succession to the Presidency.

Herbert Hoover was the first American President to make earnest and repeated overtures to a President-elect for cooperation on major problems. Shortly after the election of 1932, Hoover asked Roosevelt's backing on action to deal with the economic crisis and on European war debts; he sought F.D.R.'s aid also in selecting members of an American delegation to an approaching world economic conference. Roosevelt conferred with Hoover at the White House and their lieutenants communicated frequently with each other, but no joint action resulted. Roosevelt wrote Hoover, Dec. 19, 1932, that "It would be unwise for me to accept an apparent joint responsibility with you when, as a matter of constitutional fact, I would be wholly lacking in any attendant authority."

Roosevelt wrote later that he had felt that "for the President-elect to dabble with superficial remedies would have

⁹ See "Succession to the Presidency," *E.R.R.*, 1945 Vol. II, pp. 193-211.

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been to impair or destroy the efficacy of the drastic, far-reaching actions which were put into effect . . . [after] March 4th."¹⁰ However, William H. Woodin, chosen by Roosevelt to become Secretary of the Treasury—an appointment announced on Feb. 21—did keep in contact with the outgoing Secretary and informed Roosevelt of the developing banking crisis. Thirty-six hours after Roosevelt took the oath of office, he closed all banks and embargoed the withdrawal, transfer or domestic use of gold.¹¹

TRUMAN-EISENHOWER COOPERATION IN 1952-53 CHANGEOVER

Twenty years later, President-elect Eisenhower took the same position on sharing responsibility that had been taken by Roosevelt in 1932-33, but there were notable advances in cooperation between the outgoing and incoming administrations in the 1952-53 transition. Eisenhower and Truman met for 70 minutes on Nov. 18, first alone and then with top Truman officials. After this meeting, the President-elect went to the Pentagon for a 50-minute session with Gen. Omar Bradley and the Joint Chiefs of Staff. A joint Truman-Eisenhower statement after the White House meeting said the two men had discussed major problems of international relations and that information on these problems had been made available to the President-elect.

"We have worked out a framework of liaison and exchange of information between the present administration and the incoming administration," the joint statement said. Eisenhower had not been asked to assume any of the responsibilities of the Presidency before his inauguration, but "the arrangements we have made . . . will be of great value to the stability of our country and to the favorable progress of international affairs." The two men were confident that their meeting furnished "additional proof of the ability of the people to manage their affairs with a sense of continuity and with responsibility."

It was later disclosed that Truman had turned over to Eisenhower a top-secret three-volume "briefing handbook." The first volume contained a country-by-country summary of American foreign policies of recent years, estimates of situations existing in world danger spots, and recommendations for action in case of Communist attack in specific

¹⁰ *The Public Papers and Addresses of Franklin D. Roosevelt* (Vol. 1, 1938), p. 871.

¹¹ See "Change of Presidents," *E.R.R.*, 1952 Vol. II, p. 701.

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areas. The second volume dealt with export controls and mobilization, the third with staffing and organization of defense and security agencies and maintenance of internal security during emergencies.¹² Meanwhile, Truman had discussed transfer-of-power problems at his first Cabinet meeting after the 1952 election. He instructed each of his department heads to consult with his designated successor and to leave a holdover official to serve until the new administration got its bearings.¹³

Eisenhower began promptly to name the men chosen for his Cabinet. All of the Cabinet members and some second-line officials had been selected by the end of November. U.S. Mutual Security Ambassador William E. Draper was asked to stay on in Paris as special U.S. representative, and an agricultural advisory committee was set up to assist Secretary of Agriculture-designate Ezra Taft Benson in formulating administration farm policy.

The President-elect visited United Nations headquarters on Nov. 24 accompanied by Secretary of State-designate John Foster Dulles. Before departing for Korea, as promised during the campaign, Eisenhower appointed a committee to study the organization of the Executive Office, and while traveling homeward he met with military leaders and some members of his future Cabinet to discuss plans for obtaining a satisfactory truce. A meeting with Republican legislative leaders took place on Jan. 10, and two days later Eisenhower met with his prospective Cabinet as a body for the first time.

PREPARATIONS BY KENNEDY TO ASSUME THE PRESIDENCY

The 1952-53 pattern of inter-administration cooperation is being closely followed in the present changeover period. President Eisenhower told a news conference as far back as last July 6 that "My successor, no matter who he may be, will be given every facility to familiarize himself with every going policy, every activity, every connection we have, and . . . his associates . . . will be given like opportunity, so that this government can go forward according to the convictions of the administration that comes in, and can be informed in so doing." Immediately after the election,

¹² Truman remarked on Nov. 21, 1952, that the President-elect was "rather apalled at all the President needs to know in order to reach decisions."

¹³ Truman himself left John R. Steelman, his right-hand man, as temporary consultant to Sherman Adams, who served the new President as chief assistant.

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Eisenhower called a Cabinet meeting on measures needed to facilitate the transfer of authority at the departmental level.

As in 1952, the Budget Bureau kept a record of all campaign promises by the presidential candidates that would call for budget revisions and the necessary estimates were prepared by its technical staff. The White House was reported to have instructed all executive departments to list special problems requiring early decisions by the new President. The State Department and various defense agencies were to get up special papers on a wide variety of subjects that would need the new President's prompt attention. Certain key officials in Eisenhower's official family were asked to remain on the job to assist incoming officials during the difficult early weeks of the new administration.

The Civil Service Commission prepared a document on the federal service which will help the Kennedy administration in filling key jobs. It carries a list of all federal jobs filled by political appointment, a list of confidential or policy-making positions just below the executive level, detailed information on federal jobs outside the regular civil service, and a list of experienced individuals available to fill career posts. A special booklet for future heads of departments and agencies will give them a full picture of the workings of the bureaucracy, including information on what bureau chiefs can and cannot lawfully do about shifting personnel.

Aside from the assistance extended by the outgoing administration, Kennedy has long since gathered about him a staff of advisers to prepare him for the problems and priorities of the Presidency. No presidential candidate in history had built up so large a brain trust to develop material and to advise him on the substantive issues to be faced. More than 100 outstanding professors, many of them from Harvard, contributed to this preparatory effort.

Paul H. Nitze, former State Department policy planner, headed a Kennedy group to prepare "position papers" on defense and foreign policy. A group headed by George Ball, a Washington lawyer, prepared a study of the economic aspects of foreign relations. Sen. Stuart Symington (D Mo.) headed a committee that studied defense reorganization. Adlai Stevenson and Chester Bowles, former ambassador to India, advised on foreign policy both during the

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campaign and after the election. A group headed by James M. Landis, former chairman of the Securities and Exchange Commission and of the Civil Aeronautics Board, is preparing plans for an overhaul of the federal regulatory agencies. Other groups are studying proposals for reorganization of the Executive Office, and policies and programs on space exploration, natural resources, civil rights, scientific development, economic growth, urban renewal and labor relations.

The Vice President and the Succession

PROBLEMS connected with the transfer of executive authority after a national election differ greatly from those raised by the death of a President in office. When a President dies, there is no interim period to prepare for new responsibilities, but continuation of the same political party in control of the Executive Branch makes it unlikely that there will be early shifts in major policies, programs or personnel.

The way in which the presidential authority shall be exercised when the President is disabled and incapable of performing his duties remains unsettled. The nation on several occasions has faced situations of this kind. Congressional interest in the problem was quickened during the illnesses of President Eisenhower, but Congress failed to act on it despite urging by the President himself. Now that the country has elected a young and vigorous President, a more objective approach can be taken, and it is probable that the new Congress will come to grips with the disability question—on recommendation of the new President or on its own initiative.

RECENT ENLARGEMENTS OF VICE PRESIDENT'S DUTIES

The hazards of a transfer of executive power resulting from the death of a President remain serious, but they have been greatly reduced by the tendency of recent administrations to give the Vice President major functions in the Executive Branch. Theodore Roosevelt, the first Vice President who not only inherited the office but was elected for another term, once commented that "No Vice President is ever properly prepared to take over the Presidency." This

certainly was true during earlier years but is less true today.¹⁴

At President Truman's request, Congress in 1949 made the Vice President (Alben W. Barkley) a member of the National Security Council, thus enabling the Vice President to keep informed and to participate in formulation of policy at the highest level. Eisenhower brought Vice President Nixon into closer relations with the Chief Executive than any Vice President before him. He told a news conference, May 31, 1955: "I personally believe the Vice President . . . should be used." Nixon met with Eisenhower's Cabinet and the National Security Council, acting as chairman in the absence of the President. He served as "trouble-shooter" for the White House in Congress, headed the President's Committee on Government Contracts, and made numerous good-will tours abroad. Nixon's full knowledge of the duties and responsibilities of the Presidency was made a major point in his recent campaign for that office.

Vice President Lyndon B. Johnson is expected to play a role of equal importance in the Kennedy administration. The President-elect said on Nov. 17: "It is my belief that Sen. Johnson's great talents and experience equip him to be the most effective Vice President in the history of our country." Johnson's experience as a strong majority leader in the Senate and anticipated difficulties in winning enactment of Kennedy's "new frontier" program suggest that he will be a major arm of the White House, always privy to its inner counsels. There is little question that giving the Vice President an active role in the administration greatly reduces the hazards of a period of instability when a strong President is taken by death.

PROBLEM OF INTERIM ACTION IN PRESIDENTIAL DISABILITY

While presidential authority has been weakened in the past between the election and inauguration of a new President, a more dangerous condition exists when a Chief Executive is prevented by long illness from exercising the powers and duties of his office. There was deep anxiety both at home and abroad when President Eisenhower was stricken with a heart attack on Sept. 24, 1955, and remained hospitalized for 48 days. Concern arose again when the President underwent an operation for ileitis in June

¹⁴ A detailed history of the office is given in "Vice Presidency," *E.R.R.*, 1956 Vol. I, pp. 237-255.

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1956 and when he suffered a mild stroke in November 1957.

Actually the functions of the presidential office were carried on smoothly during Eisenhower's major illnesses. Vice President Nixon presided over meetings of the Cabinet and the National Security Council; for much of the period of incapacitation the President was able to confer with the Vice President, Cabinet members and White House aides. Due in part to prior arrangements, no need developed during the Eisenhower illnesses for action by the President which could not be taken by others or be delayed.

During periods of disability suffered by earlier Presidents the country was less fortunate. President Garfield lingered for 80 days after he was shot in 1881 and was able to perform only one official act — signing an extradition paper. The Cabinet wanted Vice President Chester A. Arthur to act in Garfield's place but there was concern lest the President, should he recover, might have no way of regaining the powers that would be exercised by the Vice President.

The most serious period of presidential disability followed the stroke suffered by Woodrow Wilson on Sept. 25, 1919. The President was so ill for six weeks that he was not able to act on legislation; 28 measures enacted by Congress became law when not signed by the President within 10 days. For nearly eight months Wilson did not attend a Cabinet meeting, although his Secretary of State called 21 meetings of the Cabinet during that period.

The public was not informed of the gravity of Wilson's condition and effective power devolved upon his wife and his physician, Dr. Cary T. Grayson, who chose the matters to be brought to the President's attention and withheld all others. Positions taken by or attributed to the President during his long illness are agreed by historians to have contributed to Senate rejection of the Versailles Treaty and the League of Nations Covenant which was a part of that document.

The problem of transfer of powers when a President is incapacitated arises out of an ambiguity in the Constitution. Article II (Sec. 1, Par. 6) provides that in case of the removal of a President from office, or of his death, resignation or "inability to discharge the powers and duties of said office, the same shall devolve on the Vice President . . ."

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But the Constitution does not say who shall make the determination that a President is disabled or what constitutes disability. Nor is there a provision for restoration of powers should a disabled President again be able to serve as before.

After President Eisenhower's recovery from his heart attack in 1955, he recommended to Congress a constitutional amendment which would provide two methods by which the Vice President could take over the presidential functions temporarily: either the President would inform the Vice President of his disability in writing and inform him again when he was ready to reassume his duties, or, if the President were unable or unwilling to do this, the Cabinet could make such a determination by majority vote.

Hearings on the proposed disability amendment were held by congressional committees in 1956 and 1957 and a number of alternative plans were considered, but no further action was taken. President Eisenhower and Vice President Nixon then drew up an agreement between themselves—a unique document in American history—which embodied the substance of the constitutional amendment previously recommended.¹⁵ It was made public March 3, 1958, and will remain in effect until Eisenhower and Nixon leave office, but it will not be binding on the administration taking office in January.

¹⁵ For text of Eisenhower-Nixon agreement, see *Congressional Quarterly Almanac* 1958, p. 77.



